

TO: All Personnel
FROM: Emil E. Tahvonen

No. 8 - January 20, 1982
Opinions - Real Estate Transfer Tax
Register of Deeds Receipts

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

FREEDOM OF INFORMATION:

Receipts for amounts paid as
real estate transfer taxes
exempt from public inspection

REGISTER OF DEEDS:

Inspection of receipts for
amount paid as real estate
transfer taxes

Copies of receipts maintained by a register of deeds for
amounts paid as real estate transfer taxes fall within the
mandatory exemption from disclosure established by 1966 PA
134, § 11b and are exempt from disclosure under the Freedom
of Information Act.

Opinion No. 6023

Honorable Gary Randall
State Representative
The Capitol
Lansing, Michigan 48909

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You have requested my opinion on the following
question:

Does the Freedom of Information Act,
1976 PA 442; MCLA 15.231 et seq; MSA
4.1801(1) et seq, permit a register
of deeds to exempt from public in-
spection copies of receipts for amounts
paid as real estate transfer taxes
under 1966 PA 134; MCLA 207.501 et seq;
MSA 7.456(1) et seq?

1966 PA 134; MCLA 207.501 et seq; MSA 7.456(1) et
seq, is an act to impose a tax upon written instruments
which transfer any interest in real property. Section 4 of
that Act, as most recently amended by 1980 PA 413, § 1,
provides in pertinent part:

"The tax shall be at the rate of 55
cents in a county with a population
of less than 2,000,000 and not more

than 75 cents as authorized by the county board of commissioners in a county with a population of 2,000,000 or more for each \$500.00 or fraction thereof of the total value. A written instrument subject to the tax imposed by this act shall state on its face the total value of the real property or there shall be attached to the instrument an affidavit declaring the total value of the real property"

Payment of the tax is to be evidenced by affixing documentary stamps to the written instrument showing the amount of tax paid. 1966 PA 134, supra, § 7.

As originally enacted, 1966 PA 134, supra, made it impossible to record a written instrument with the register of deeds without revealing the value of the real estate transferred by that instrument. 1966 PA 134, supra, § 11 provided in pertinent part that:

"(a) No written instrument upon which a tax is imposed by this act shall be recorded in the office of any register of deeds of any county of this state unless documentary stamps have been affixed thereto as required by this act and unless there is attached thereto an affidavit as provided in sections 10 and 11. The affidavit shall be recorded as a part of the instrument.

"(b) Each written instrument upon which a tax is imposed by this act shall have appended thereto an affidavit of the parties to the transaction or their legal representatives declaring the value of the property transferred

"(d) The register of deeds shall transmit 2 true copies of the affidavit to the assessing officer of the governmental unit in which the property is located."

Thus, even when the taxpayer elected not to state the value of the real property on the face of the written instrument, it was still possible to determine the value of the transferred property either from the amount of the documentary

stamps affixed to the transfer instrument or from the recorded affidavit setting forth the value. Moreover, the register of deeds was expressly required to forward copies of the affidavit, showing the value of the transferred real estate, to the local assessor.

1966 PA 134, § 11, supra, however, was subsequently amended by 1968 PA 327 to contain only subsections (a) and (b) and now provides in pertinent part:

"(a) No written instrument subject to this act shall be recorded in the office of any register of deeds of any county of this state unless documentary stamps as required by this act have been purchased at the time of presentation by the party responsible for their purchase according to subsection (2) of section 2. The stamps shall be affixed to the face of the instrument prior to recording unless the person specifically requests that the instrument be recorded prior to the affixing of the stamps. In the latter case, the stamps may be affixed to the reverse side of the instrument, however, in those cases where it is necessary to record said reverse side, the stamps shall be affixed after recording by the register of deeds. . . .

"(b) An affidavit attached to a written instrument under the provisions of this act shall not be recorded and shall be detached from the written instrument prior to the recording of the instrument. Such affidavit shall be used for county fund auditing purposes only and shall not be disclosed to any other person."
(Emphasis supplied.)

1968 PA 327 represented a significant departure from the prior law. Because it permits the recording of a transfer instrument prior to the affixing of the documentary stamps, it is no longer possible to compute the value of the property from the value of the stamps, in those instances where the taxpayer elects to use this method. Nor may the value of the property be determined from the affidavit since

the amended provision requires that the affidavit remain unrecorded and further requires that it is to be used for county auditing purposes only and is not to be disclosed to any other person. Finally, 1968 PA 327 completely eliminated the provision contained in former § 11(d) of 1966 PA 134 requiring transmittal of true copies of the affidavit to the local assessor.

Also relevant in this regard is a recent amendment to the General Property Tax Act, 1893 PA 206, as amended; MCLA 211.1 et seq; MSA 7.1 et seq. Section 27(3)(d) of that Act, added by amendatory 1976 PA 411, required that a purchaser of real property provide the local assessor with copies of the purchase agreement or of an affidavit which would reveal the value of the property. Section 27(3)(d) was subsequently amended by 1978 PA 25 which made the submission of this information optional.

Thus, the Legislature has by amendment eliminated any requirement that the value of transferred real estate be made known even to the local assessor by the register of deeds or by the taxpayer himself and, further, has expressly provided in 1966 PA 134, supra, § 11(b), as amended, that when a taxpayer elects, pursuant to 1966 PA 134, § 11(a), as amended, not to disclose the value of the real estate, the affidavit declaring that value is not to be disclosed to any person except for county fund auditing purposes.

The Freedom of Information Act, 1976 PA 442; MCLA 15.231 et seq; MSA 4.1801(1) et seq, is an act to provide for public access to certain public records of public bodies. Section 13(1)(d) of that act permits a public body to exempt from disclosure:

"Records or information specifically described and exempted from disclosure by statute."

1966 PA 134, supra, § 11(b), as amended, expressly exempts affidavits stating the value of real estate from disclosure to any person except for county fund auditing purposes. It should be noted, moreover, that this statutory exemption from disclosure, by its terms, is mandatory rather than permissive. Cf, Tobin v Civil Service Commission, 98 Mich App 604, 608; 296 NW2d 320 (1980) lv granted, ____ Mich ____, and Blue Cross and Blue Shield of Michigan v Insurance Bureau, 104 Mich App 113, 124-126; 304 NW2d 499 (1981). Such affidavits, then, are exempt from disclosure pursuant to the Freedom of Information Act, § 13(1)(d), supra, as "[r]ecords or information specifically described and exempted from disclosure by statute."

A somewhat more difficult question is posed by the receipt books which are the subject of your inquiry. When a taxpayer purchases the required number of documentary stamps pursuant to 1966 PA 134, supra, a receipt is issued to the taxpayer. A record of this receipt is maintained in the register of deed's receipt book in order to account for the revenue collected. This record, of necessity, includes such information as the name of the taxpayer, the nature of the payment, and the amount paid. Thus, by examining this receipt book, a person may determine the amount of the transfer tax paid and, hence, the approximate value of the real estate in question.

The statutory exemption from disclosure established by 1966 PA 134, supra, § 11(b), as amended, refers expressly

only to the affidavit of value; no reference is made to any other document. Nevertheless, an examination of the amended provisions of section 11(b), together with the various other amendments described above both to 1966 PA 134, supra, and to the General Property Tax Act, supra, makes it clear that the Legislature intended to mandate the confidentiality of information concerning the value of transferred real estate, at least where the taxpayer elects such confidentiality. To permit inspection by the public of copies of receipts kept by the register of deeds concerning such transactions, thus disclosing the identical information rendered exempt by 1966 PA 134, § 11(b), as amended, would totally frustrate this clear legislative intent.

I am advised that your request for my opinion arose out of an unsuccessful attempt by a city assessor to obtain copies of such receipts from a register of deeds in order to use those receipts to aid him in determining the proper assessment of certain real estate. I am aware that the conclusion I have reached may make it more difficult for such assessors to carry out their statutory duty to make such assessments. The Legislature, however, presumably was well aware of this problem and by amendatory 1968 PA 327 and 1976 PA 411, expressly eliminated the former requirement that such information be provided to the local assessor. If the unavailability of this information is found to unduly hamper local assessors, the Legislature may address this problem.

It is my opinion, therefore, that when a taxpayer has elected pursuant to 1966 PA 134, § 11(a), as amended, to maintain confidentiality as to the value of transferred real

estate, copies of receipts maintained by a register of deeds showing the amounts paid as real estate transfer taxes under 1966 PA 134, supra, fall within the mandatory exemption from disclosure established by 1966 PA 134, § 11(b), as amended. Consequently, the register of deeds is required to exempt copies of such receipts from disclosure pursuant to the Freedom of Information Act, § 13(1)(d), supra.


FRANK J. KELLEY
Attorney General